

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>CLYDALE HUERTER</b>	)	
Claimant	)	
VS.	)	
	)	
<b>VOLUME SHOE CORPORATION (PAYLESS)</b>	)	Docket Nos. 135,825;
Respondent	)	135,826; 143,390
AND	)	
	)	
<b>SELF INSURED</b>	)	
Insurance Carrier	)	
AND	)	
	)	
<b>CIGNA WORKERS COMPENSATION</b>	)	
	)	
AND	)	
	)	
<b>KANSAS WORKERS COMPENSATION FUND</b>	)	

**ORDER**

**ON** the 21st day of June, 1994, the application of the claimant for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge Floyd V. Palmer, dated January 24, 1994, came on for oral argument.

**APPEARANCES**

The claimant appeared by and through her attorney, Derenda J. Mitchell of Topeka, Kansas. The respondent Volume Shoe Corporation, a qualified self insured, appeared by and through its attorney, Patrick M. Salsbury of Topeka, Kansas. The Kansas Workers Compensation Fund appeared by and through its attorney, Larry G. Karns of Topeka, Kansas. There were no other appearances.

### **RECORD**

The record consists of the documents filed of record with the Division of Workers Compensation in this docketed matter including the Preliminary Hearing of December 9, 1993, before Administrative Law Judge Floyd V. Palmer, with the exhibits attached thereto.

### **ISSUES**

- (1) Whether the Administrative Law Judge exceeded his jurisdiction in his Order of January 24, 1994, wherein he denied claimant's Motion for Sanctions, stating the August 23, 1993, letter which forms the basis of claimant's motion does not constitute a "pleading, motion, or other paper" provided for by the Kansas Workers Compensation Act under K.S.A. 44-536a.
- (2) Whether the Appeals Board has jurisdiction to hear this matter under K.S.A. 44-551.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purpose of preliminary hearings, the Appeals Board finds as follows:

K.S.A. 44-551(b)(1) grants the Appeals Board the authority to review all acts, findings, awards, decisions, rulings or modifications of findings or awards made by an Administrative Law Judge.

The hearing of December 9, 1993, was not a preliminary hearing under K.S.A. 44-534a but rather a motion for sanctions under K.S.A. 44-536a. As such, the Appeals Board is not limited to the jurisdictional issues listed under K.S.A. 44-534a and therefore has jurisdiction to review this order.

K.S.A. 44-536a(d) provides:

"If a pleading, motion or other paper provided for by the workers compensation act is signed in violation of this section, the administrative law judge, director or board, upon motion or upon its own initiative upon notice and after opportunity to be heard, shall impose upon the person who signed such pleading or a represented party, or both, an appropriate sanction, which

may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including reasonable attorney fees."

In this matter, the Administrative Law Judge in his Order of April 9, 1993, granted medical treatment to the claimant with a physician to be chosen by the respondent "for management of pain, including headache, continuing until claimant is certified as having maximum medical improvement."

The August 23, 1993, letter in question from the respondent's insurance adjustor denied medical care alleging the Order of April 9, 1993, was "for management of pain, including headaches" only. The insurance company denied treatment to the claimant for the problems in claimant's neck and back.

The Administrative Law Judge ruled in his Order of January 24, 1994, that the August 23, 1993, letter from the insurance adjustor was not a "pleading, motion or other paper provided for by the workers compensation act." The August 23, 1993, letter from the insurance adjustor clearly would not constitute a pleading or motion under the Workers Compensation Act with the only issue remaining whether such letter constitutes "other paper."

As this letter is an opinion letter by an adjustor, it is difficult to comprehend how it could be seen as "other paper provided for by the Workers Compensation Act." There is no indication in the Workers Compensation Act that letters from adjustors dealing with questions of medical care would be provided for by the Workers Compensation Act. There is also no indication that this letter would ever be contemplated as a portion of a Workers Compensation file. Therefore, this cannot form the basis for sanctions under K.S.A. 44-536a. Perhaps certain circumstances will arise wherein letters can be of such a nature as to be considered as "other paper" provided for by the Workers Compensation Act but the Appeals Board finds the letter in question does not rise to that level.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer, dated December 9, 1993, wherein claimant's Motion for Sanctions under K.S.A. 44-536a is denied, shall be and hereby is affirmed and remains in full force and effect.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August, 1994.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Derenda J. Mitchell, 700 Kansas Avenue, Topeka, KS 66603-2007  
Patrick M. Salsbury, 515 S. Kansas Avenue, Topeka, KS 66603  
Larry G. Karns, PO Box 1280, Topeka, KS 66601-1280  
Floyd V. Palmer, Administrative Law Judge  
George Gomez, Director